

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 16:270. Apportionment; receipts[sales] factor

5 RELATES TO: KRS 141.120, 141.040~~[(5)(b)]~~, 141.206

6 STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.120~~[(10)(b)]~~

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the
8 Department of Revenue to promulgate administrative regulations to administer and enforce
9 Kentucky's tax laws. KRS 141.120(9)~~[KRS 141.120(8)]~~ requires that all apportionable[business]

10 income of multi-state corporations be apportioned to Kentucky by multiplying the income by a
11 fraction,~~[, the numerator of which is the property factor plus the payroll factor plus a weighted~~
12 ~~sales factor and the denominator of which is four (4).]~~ KRS 141.120~~(11)(d)~~~~[(10)(b)]~~ authorizes the
13 cabinet to promulgate administrative regulations providing how to determine the receipts[sales]
14 factor used in the multi-state apportionable[business] income apportionment formula. This
15 administrative regulation provides guidelines for determining the receipts[sales] factor of a
16 multistate corporation.

17 Section 1. Definitions. (1) "Billing address" means the location indicated in the books and
18 records of the taxpayer as the primary mailing address relating to a customer's account as of the
19 time of the transaction as kept in good faith in the normal course of business and not for tax
20 avoidance purposes.

21 (2) "Broadcaster" means a taxpayer that is a television broadcast network, a cable program

network, or a television distribution company. The term “broadcaster” does not include a platform distribution company.

(3) “Broadcast customer” means a person, corporation, partnership, limited liability company, or other entity, such as an advertiser or a platform distribution company, that has a direct connection or contractual relationship with the broadcaster under which revenue is derived by a broadcaster.

(4) “Business customer” means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and must be assigned consistent with the rules for those sales.

(5) “Code” means the Internal Revenue Code as defined by KRS 141.010(14).

(6) “Film programming” means one or more performances, events, or productions (or segments of performances, events, or productions) intended to be distributed for visual and auditory perception, including but not limited to news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

(7) “Individual customer” means a customer that is not a business customer.

(8) “Intangible property” generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; information; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and computer software, except as otherwise provided in this administrative regulation.

1 (9) "Place of order," means the physical location from which a customer places an order for a
2 sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the
3 taxpayer.

4 (10) "Platform distribution company" means a cable service provider, a direct broadcast
5 satellite system, an Internet content distributor, or any other distributor that directly charges
6 viewers for access to any film programming.

7 (11) "Population" means the most recent population data maintained by the U.S. Census
8 Bureau for the year in question as of the close of the taxable period.

9 (12) "Related member" is defined by KRS 141.205(g).

10 (13) "State where a contract of sale is principally managed by the customer," means the
11 primary location at which an employee or other representative of a customer serves as the primary
12 contact person for the taxpayer with respect to the day-to-day execution and performance of a
13 contract entered into by the taxpayer with the customer.

14 Section 2. Additional Principles.

15 (1) Year to year consistency. If the taxpayer departs from or modifies the basis for excluding
16 or including gross receipts in the receipts factor used in returns for prior years, the taxpayer shall
17 disclose in the return for the current year the nature and extent of the modification.

18 (2) State to state consistency. If the returns or reports filed by the taxpayer with all states to
19 which the taxpayer reports are not uniform in the inclusion or exclusion of gross receipts, the
20 taxpayer shall disclose in its Kentucky return the nature and extent of the variance.

21 (3) Denominator. The denominator of the receipts factor shall include the gross receipts
22 derived by the taxpayer from transactions and activity in the regular course of its trade or business,
23 except gross receipts excluded under this administrative regulation.

1 (4) Numerator. The numerator of the receipts factor shall include gross receipts attributable to
2 this state and derived by the taxpayer from transactions and activity in the regular course of its
3 trade or business, except gross receipts excluded under this administrative regulation.

4 Section 3. Sales of Tangible Personal Property in This State. (1) Gross receipts from sales of
5 tangible personal property (except sales to the United States Government) are in this state if the
6 property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or
7 other conditions of sale.

8 (2) Property shall be deemed to be delivered or shipped to a purchaser within this state if the
9 recipient is located in this state, even though the property is ordered from outside this state.

10 Example. The taxpayer, with inventory in State A, sold \$100,000 of its products to a purchaser
11 having branch stores in several states, including Kentucky. The order for the purchase was placed
12 by the purchaser's central purchasing department located in State B. \$25,000 of the purchase order
13 was shipped directly to purchaser's branch store in Kentucky. The branch store in Kentucky is the
14 purchaser with respect to \$25,000 of the taxpayer's sales.

15 (3) Property is delivered or shipped to a purchaser within this state if the shipment terminates
16 in this state, even though the property is subsequently transferred by the purchaser to another state.

17 Example. The taxpayer makes a sale to a purchaser who maintains a central warehouse in
18 Kentucky at which all merchandise purchases are received. The purchaser reships the goods to its
19 branch stores in other states for sale. All of the taxpayer's products shipped to the purchaser's
20 warehouse in Kentucky constitute property delivered or shipped to a purchaser within Kentucky.

21 (4) The term "purchaser within this state" shall include the ultimate recipient of the property if
22 the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped
23 to the ultimate recipient within this state.

1 Example. A taxpayer in Kentucky sold merchandise to a purchaser in State A. Taxpayer
2 directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the
3 purchaser's customer in Kentucky pursuant to purchaser's instructions. The sale by the taxpayer is
4 in Kentucky.

5 (5) When property being shipped by a seller from the state of origin to a consignee in another
6 state is diverted while en route to a purchaser in this state, the sales are in this state.

7 Example. The taxpayer, a produce grower in State A, begins shipment of perishable produce
8 to the purchaser's place of business in State B. While en route, the produce is diverted to the
9 purchaser's place of business in Kentucky in which state the taxpayer is subject to tax. The sale by
10 the taxpayer is attributed to Kentucky.

11 Section 4. Sales of Tangible Personal Property to the United States Government. Gross receipts
12 from sales of tangible personal property to the United States Government are in this state if the
13 property is shipped from an office, store, warehouse, factory, or other place of storage in this state.
14 For the purposes of this administrative regulation, only sales for which the United States
15 Government makes direct payment to the seller pursuant to the terms of a contract constitute sales
16 to the United States Government. Thus, sales by a subcontractor to the prime contractor, the party
17 to the contract with the United States Government, do not constitute sales to the United States
18 Government.

19 Example (i). A taxpayer contracts with General Services Administration to deliver X
20 number of trucks which were paid for by the United States Government. The sale is a sale to the
21 United States Government.

22 Example (ii). The taxpayer, as a subcontractor to a prime contractor with the National
23 Aeronautics and Space Administration, contracts to build a component of a rocket for \$1,000,000.

1 The sale by the subcontractor to the prime contractor is not a sale to the United States Government.

2 Section 5. Sales Other Than Sales of Tangible Personal Property: General Rules. In general,
3 KRS 141.120(11) provides for the inclusion in the numerator of the receipts factor of gross receipts
4 arising from transactions other than sales of tangible personal property.

5 (1) Market-Based Sourcing. Receipts, other than receipts described in KRS 141.120(10) (from
6 sales of tangible personal property) are in this state within the meaning of KRS 141.120(11) if and
7 to the extent that the taxpayer's market for the sales is in this state. In general, the provisions in
8 this section establish uniform rules for:

9 (a) Determining whether and to what extent the market for a sale other than the sale of tangible
10 personal property is in this state;

11 (b) Reasonably approximating the state or states of assignment where the state or states cannot
12 be determined;

13 (c) Excluding receipts from the sale of intangible property from the numerator and denominator
14 of the receipts factor pursuant to KRS 141.120(11)(a)(4)(b)iii; excluding receipts from the
15 denominator of the receipts factor, pursuant to KRS 141.120(11)(c) where the state or states of
16 assignment cannot be determined or reasonably approximated; or excluding receipts from the
17 denominator of the receipts factor, pursuant to KRS 141.120(11)(c) where the taxpayer is not
18 taxable in the state to which the receipts are assigned as determined under KRS 141.120(3).

19 (2) General Principles of Application; Contemporaneous Records. In order to satisfy the
20 requirements of this administrative regulation, a taxpayer's assignment of receipts from sales of
21 other than tangible personal property must be consistent with the following principles:

22 (a)1. A taxpayer shall apply the rules set forth in this administrative regulation based on
23 objective criteria and shall consider all sources of information reasonably available to the taxpayer

1 at the time of its tax filing including, without limitation, the taxpayer's books and records kept in
2 the normal course of business;

3 2. A taxpayer shall determine its method of assigning receipts in good faith, and apply it
4 consistently with respect to similar transactions and year to year; and

5 3. A taxpayer shall retain contemporaneous records that explain the determination and
6 application of its method of assigning its receipts, including its underlying assumptions, and shall
7 provide those records to the department upon request.

8 (b) This administrative regulation provides various assignment rules that apply sequentially in
9 a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable
10 effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the
11 hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where
12 applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine
13 the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to
14 reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine
15 the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and
16 with reasonable effort before it may reasonably approximate the state or states.

17 (c) A taxpayer's method of assigning its receipts, including the use of a method of
18 approximation, where applicable, must reflect an attempt to obtain the most accurate assignment
19 of receipts consistent with this administrative regulation, rather than an attempt to lower the
20 taxpayer's tax liability. A method of assignment that is reasonable for one taxpayer may not
21 necessarily be reasonable for another taxpayer, depending upon the applicable facts.

22 (3) Rules of Reasonable Approximation. (a) In general, this administrative regulation
23 establishes uniform rules for determining whether and to what extent the market for a sale other

1 than the sale of tangible personal property is in this state. The administrative regulation also sets
2 forth rules of reasonable approximation, which apply if the state or states of assignment cannot be
3 determined. In some instances, the reasonable approximation must be made in accordance with
4 specific rules of approximation prescribed in this administrative regulation. In other cases, the
5 applicable rule in this administrative regulation permits a taxpayer to reasonably approximate the
6 state or states of assignment, using a method that reflects an effort to approximate the results that
7 would be obtained under the applicable rules or standards set forth in this administrative regulation.

8 (b) Approximation Based Upon Known Sales. In an instance where, applying the applicable
9 rules set forth in subsections (7), (8), (9), and (10) of this section, a taxpayer can ascertain the state
10 or states of assignment of a substantial portion of its receipts from sales of substantially similar
11 services ("assigned receipts"), but not all of those sales, and the taxpayer reasonably believes,
12 based on all available information, that the geographic distribution of some or all of the remainder
13 of those sales generally tracks that of the assigned receipts, it shall include receipts from those
14 sales which it believes tracks the geographic distribution of the assigned receipts in its receipts
15 factor in the same proportion as its assigned receipts. This rule also applies in the context of
16 licenses and sales of intangible property where the substance of the transaction resembles a sale of
17 goods or services.

18 (c) Related-Member Transactions – Information Imputed from Customer to Taxpayer. Where
19 a taxpayer has receipts subject to this administrative regulation from transactions with a related-
20 member customer, information that the customer has that is relevant to the sourcing of receipts
21 from these transactions is imputed to the taxpayer.

22 (4) Rules with Respect to Exclusion of Receipts from the Receipts Factor. (a) The receipts
23 factor only includes those amounts defined as receipts under KRS 141.120(1)(e).

1 (b) Certain receipts arising from the sale of intangibles are excluded from the numerator and
2 denominator of the sales factor pursuant to KRS 141.120(11)(a)(4)(b)iii.

3 (c) In a case in which a taxpayer cannot ascertain the state or states to which receipts of a sale
4 are to be assigned pursuant to the applicable rules set forth in this administrative regulation
5 (including through the use of a method of reasonable approximation, where relevant) using a
6 reasonable amount of effort undertaken in good faith, the receipts must be excluded from the
7 denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

8 (d) In a case in which a taxpayer can ascertain the state or states to which receipts from a sale
9 are to be assigned pursuant to the applicable rules set forth in this administrative regulation, but
10 the taxpayer is not taxable in one or more of those states, the receipts that would otherwise be
11 assigned to those states where the taxpayer is not taxable must be excluded from the denominator
12 of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

13 (e) Receipts of a taxpayer from hedging transactions, or from the maturity, redemption, sale,
14 exchange, loan or other disposition of cash or securities, shall be excluded pursuant to KRS
15 141.120(1)(e).

16 (f) Nothing in the provisions adopted here pursuant to KRS 141.120 is intended to limit the
17 application of KRS 141.120(12) or the authority granted to the department under KRS
18 141.120(12).

19 (5) Sale, Rental, Lease or License of Real Property. In the case of a sale, rental, lease or license
20 of real property, the receipts from the sale are in this state if and to the extent that the property is
21 in this state.

22 (6) Rental, Lease or License of Tangible Personal Property. In the case of a rental, lease or
23 license of tangible personal property, the receipts from the sale are in this state if and to the extent

1 that the property is in this state. If property is mobile property that is located both within and
2 without this state during the period of the lease or other contract, the receipts assigned to this state
3 are the receipts from the contract period multiplied by the fraction computed under 103 KAR
4 16:290. (as adjusted when necessary to reflect differences between usage during the contract
5 period and usage during the taxable year).

6 (7) Sale of a Service. (a) General Rule. The receipts from a sale of a service are in this state if
7 and to the extent that the service is delivered to a location in this state. In general, the term
8 “delivered to a location” refers to the location of the taxpayer’s market for the service, which may
9 not be the location of the taxpayer’s employees or property. The rules to determine the location of
10 the delivery of a service in the context of several specific types of service transactions are set forth
11 in subsections (7), (8), (9), and (10) of this section.

12 (b) In-Person Services. 1. In general, except as otherwise provided in this paragraph, in-person
13 services are services that are physically provided in person by the taxpayer, where the customer or
14 the customer’s real or tangible property upon which the services are performed is in the same
15 location as the service provider at the time the services are performed. This rule includes situations
16 where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of
17 in-person services may include:

18 a. Warranty and repair services;

19 b. Cleaning services;

20 c. Plumbing services;

21 d. Carpentry;

22 e. Construction contractor services;

23 f. Pest control;

1 g. Landscape services;

2 h. Medical and dental services,

3 i. Including medical testing,

4 j. X-rays and mental health care and treatment;

5 k. Child care;

6 l. Hair cutting and salon services;

7 m. Live entertainment and athletic performances; and

8 n. In-person training or lessons.

9 In-person services include services described in 1.a.-n. above that are performed:

10 a. At a location that is owned or operated by the service provider; or

11 b. A location of the customer, including the location of the customer's real or tangible personal
12 property.

13 Various professional services, including, but not limited to, accounting, financial and consulting
14 services, and other similar services are not treated as in-person services within the meaning of this
15 subparagraph, although they may involve some amount of in-person contact.

16 2. Assignment of Receipts. a. Rule of Determination. Except as otherwise provided in this
17 subparagraph, if the service provided by the taxpayer is an in-person service, the service is
18 delivered to the location where the service is received. Therefore, the receipts from a sale are in
19 this state if and to the extent the customer receives the in-person service in this state. In assigning
20 its receipts from sales of in-person services, a taxpayer must first attempt to determine the location
21 where a service is received, as follows:

22 a. If the service is performed with respect to the body of an individual customer in this state
23 (e.g., hair cutting or x-ray services) or in the physical presence of the customer in this state (e.g.,

1 live entertainment or athletic performances), the service is received in this state.

2 b. If the service is performed with respect to the customer's real estate in this state or if the
3 service is performed with respect to the customer's tangible personal property at the customer's
4 residence or in the customer's possession in this state, the service is received in this state.

5 c. If the service is performed with respect to the customer's tangible personal property and the
6 tangible personal property is to be shipped or delivered to the customer, whether the service is
7 performed within or outside this state, the service is received in this state if the property is shipped
8 or delivered to the customer in this state.

9 3. Rule of Reasonable Approximation. In an instance in which the state or states where a
10 service is actually received cannot be determined, but the taxpayer has sufficient information
11 regarding the place of receipt from which it can reasonably approximate the state or states where
12 the service is received, the taxpayer shall reasonably approximate such state or states. If the state
13 to which the receipts are to be assigned can be determined or reasonably approximated, but the
14 taxpayer is not taxable in that state, the receipts that would otherwise be assigned to the state are
15 excluded from the denominator of the taxpayer's receipts factor pursuant to KRS 141.120(11)(c).

16 4. Examples. In these examples assume, unless otherwise stated, that the taxpayer is taxable in
17 each state to which its receipts would be assigned, so that there is no requirement that the receipts
18 from the sale or sales be eliminated from the denominator of the taxpayer's receipts factor. Note
19 that for purposes of the examples, it is irrelevant whether the services are performed by an
20 employee of the taxpayer or by an independent contractor acting on the taxpayer's behalf.

21 Example (i). Salon Corp has retail locations in Kentucky and in other states where it provides
22 hair cutting services to individual and business customers, the latter of whom are paid for through
23 the means of a company account. The receipts from sales of services provided at Salon Corp's in-

1 state locations are in Kentucky. The receipts from sales of services provided at Salon Corp's
2 locations outside Kentucky, even when provided to residents of Kentucky, are not receipts from
3 in-state sales.

4 Example (ii). Landscape Corp provides landscaping and gardening services in Kentucky and
5 in neighboring states. Landscape Corp provides landscaping services at the in-state vacation home
6 of an individual who is a resident of another state and who is located outside Kentucky at the time
7 the services are performed. The receipts from sale of services provided at the in-state location are
8 in Kentucky.

9 Example (iii). Same facts as in Example (ii), except that Landscape Corp provides the
10 landscaping services to Retail Corp, a corporation with retail locations in several states, and the
11 services are with respect to those locations of Retail Corp that are in Kentucky and in other states.
12 The receipts from the sale of services provided to Retail Corp are in Kentucky to the extent the
13 services are provided in Kentucky.

14 Example (iv). Camera Corp provides camera repair services at a Kentucky retail location to
15 walk-in individual and business customers. In some cases, Camera Corp actually repairs a camera
16 that is brought to its in-state location at a facility that is in another state. In these cases, the repaired
17 camera is then returned to the customer at Camera Corp's Kentucky location. The receipts from
18 sale of these services are in Kentucky.

19 Example (v). Same facts as in Example (iv), except that a customer located in Kentucky mails
20 the camera directly to the out-of-state facility owned by Camera Corp to be fixed, and receives the
21 repaired camera back in Kentucky by mail. The receipts from sale of the service are in Kentucky.

22 Example (vi). Teaching Corp provides seminars in Kentucky to individual and business
23 customers. The seminars and the materials used in connection with the seminars are prepared

1 outside the state, the teachers who teach the seminars include teachers that are resident outside the
2 state, and the students who attend the seminars include students that are resident outside the state.
3 Because the seminars are taught in Kentucky the receipts from sales of the services are in
4 Kentucky.

5 (8) Services Delivered to the Customer, or on Behalf of the Customer, or Delivered
6 Electronically Through the Customer. (a) In general, if the service provided by the taxpayer is not
7 an in-person service within the meaning of subsection (7)(b) of this section, or a professional
8 service within the meaning of subsection (10) of this section, and the service is delivered to or on
9 behalf of the customer, or delivered electronically through the customer, the receipts from a sale
10 are in this state if and to the extent that the service is delivered in this state. For purposes of
11 subsections (8) and (9) of this section, a service that is delivered “to” a customer is a service in
12 which the customer and not a third party is the recipient of the service. A service that is delivered
13 “on behalf of” a customer is one in which a customer contracts for a service but one or more third
14 parties, rather than the customer, is the recipient of the service, such as fulfillment services, or the
15 direct or indirect delivery of advertising to the customer’s intended audience. A service can be
16 delivered to or on behalf of a customer by physical means or through electronic transmission. A
17 service that is delivered electronically “through” a customer is a service that is delivered
18 electronically to a customer for purposes of resale and subsequent electronic delivery in
19 substantially identical form to an end user or other third-party recipient.

20 (b) Assignment of Receipts. The assignment of receipts to a state or states in the instance of a
21 sale of a service that is delivered to the customer or on behalf of the customer, or delivered
22 electronically through the customer, depends upon the method of delivery of the service and the
23 nature of the customer. Separate rules of assignment apply to services delivered by physical means

1 and services delivered by electronic transmission. (For purposes of this subsection,, a service
2 delivered by an electronic transmission is not a delivery by a physical means). If a rule of
3 assignment set forth in this administrative regulation, depends on whether the customer is an
4 individual or a business customer, and the taxpayer acting in good faith cannot reasonably
5 determine whether the customer is an individual or business customer, the taxpayer shall treat the
6 customer as a business customer. If the state to which the receipts from a sale are to be assigned
7 can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the
8 receipts that would otherwise be assigned to that state are excluded from the denominator of the
9 taxpayer's receipts factor.

10 1. Delivery to or on Behalf of a Customer by Physical Means Whether to an Individual or
11 Business Customer. Services delivered to a customer or on behalf of a customer through a physical
12 means include, for example;

13 a. Product delivery services where property is delivered to the customer or to a third party on
14 behalf of the customer;

15 b. The delivery of brochures, fliers or other direct mail services;

16 c. The delivery of advertising or advertising-related services to the customer's intended
17 audience in the form of a physical medium; and

18 d. The sale of custom software where the taxpayer installs the custom software at the
19 customer's site (e.g., where software is developed for a specific customer in a case where the
20 transaction is properly treated as a service transaction for purposes of corporate taxation.) The
21 rules in this administrative regulation apply whether the taxpayer's customer is an individual
22 customer or a business customer.

23 e. Rule of Determination. In assigning the receipts from a sale of a service delivered to a

1 customer or on behalf of a customer through a physical means, a taxpayer must first attempt to
2 determine the state or states where the service is delivered. If the taxpayer is able to determine the
3 state or states where the service is delivered, it shall assign the receipts to that state or states.

4 f. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where
5 the service is actually delivered, but has sufficient information regarding the place of delivery from
6 which it can reasonably approximate the state or states where the service is delivered, it shall
7 reasonably approximate the state or states.

8 g. Examples. In these examples assume, unless otherwise stated, that the taxpayer is taxable
9 in each state to which its receipts would be assigned, so that there is no requirement in these
10 examples that the receipts must be eliminated from the denominator of the taxpayer's receipts
11 factor.

12 Example (i). Direct Mail Corp, a corporation based outside Kentucky, provides direct mail
13 services to its customer, Business Corp. Business Corp contracts with Direct Mail Corp to deliver
14 printed fliers to a list of customers that is provided to it by Business Corp. Some of Business Corp's
15 customers are in Kentucky and some of those customers are in other states. Direct Mail Corp will
16 use the postal service to deliver the printed fliers to Business Corp's customers. The receipts from
17 the sale of Direct Mail Corp's services to Business Corp are assigned to Kentucky to the extent
18 that the services are delivered on behalf of Business Corp to Kentucky customers (i.e., to the extent
19 that the fliers are delivered on behalf of Business Corp to Business Corp's intended audience in
20 Kentucky).

21 Example (ii). Ad Corp is a corporation based outside Kentucky that provides advertising and
22 advertising-related services in Kentucky and in neighboring states. Ad Corp enters into a contract
23 at a location outside Kentucky with an individual customer who is not a Kentucky resident to

1 design advertisements for billboards to be displayed in Kentucky, and to design fliers to be mailed
2 to Kentucky residents. All of the design work is performed outside Kentucky. The receipts from
3 the sale of the design services are in Kentucky because the service is physically delivered on behalf
4 of the customer to the customer's intended audience in Kentucky.

5 Example (iii). Same facts as Example (ii), except that the contract is with a business customer
6 that is based outside Kentucky. The receipts from the sale of the design services are in Kentucky
7 because the services are physically delivered on behalf of the customer to the customer's intended
8 audience in Kentucky.

9 Example (iv). Fulfillment Corp, a corporation based outside Kentucky, provides product
10 delivery fulfillment services in Kentucky and in neighboring states to Sales Corp, a corporation
11 located outside Kentucky that sells tangible personal property through a mail order catalog and
12 over the Internet to customers. In some cases when a customer purchases tangible personal
13 property from Sales Corp to be delivered in Kentucky, Fulfillment Corp will, pursuant to its
14 contract with Sales Corp, deliver that property from its fulfillment warehouse located outside
15 Kentucky. The receipts from the sale of the fulfillment services of Fulfillment Corp to Sales Corp
16 are assigned to Kentucky to the extent that Fulfillment Corp's deliveries on behalf of Sales Corp
17 are to recipients in Kentucky.

18 Example (v). Software Corp, a software development corporation, enters into a contract with
19 a business customer, Buyer Corp, which is physically located in Kentucky, to develop custom
20 software to be used in Buyer Corp's business. Software Corp develops the custom software outside
21 Kentucky, and then physically installs the software on Buyer Corp's computer hardware located
22 in Kentucky. The development and sale of the custom software is properly characterized as a
23 service transaction, and the receipts from the sale are assigned to Kentucky because the software

1 is physically delivered to the customer in Kentucky.

2 Example (vi). Same facts as Example (v), except that Buyer Corp has offices in Kentucky and
3 several other states, but is commercially domiciled outside Kentucky and orders the software from
4 a location outside Kentucky. The receipts from the development and sale of the custom software
5 service are assigned to Kentucky because the software is physically delivered to the customer in
6 Kentucky.

7 (9) Delivery to a Customer by Electronic Transmission. Services delivered by electronic
8 transmission include, without limitation, services that are transmitted through the means of wire,
9 lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other
10 similar means, whether or not the service provider owns, leases or otherwise controls the
11 transmission equipment. In the case of the delivery of a service by electronic transmission to a
12 customer, the following rules apply:

13 (a) Services Delivered By Electronic Transmission to an Individual Customer. 1. a. Rule of
14 Determination. In the case of the delivery of a service to an individual customer by electronic
15 transmission, the service is delivered in this state if and to the extent that the taxpayer's customer
16 receives the service in this state. If the taxpayer can determine the state or states where the service
17 is received, it shall assign the receipts from that sale to that state or states.

18 b. Rules of Reasonable Approximation. If the taxpayer cannot determine the state or states
19 where the customer actually receives the service, but has sufficient information regarding the place
20 of receipt from which it can reasonably approximate the state or states where the service is
21 received, it shall reasonably approximate the state or states. If a taxpayer does not have sufficient
22 information from which it can determine or reasonably approximate the state or states in which
23 the service is received, it shall reasonably approximate the state or states using the customer's

1 billing address.

2 2. Services Delivered By Electronic Transmission to a Business Customer. a. Rule of
3 Determination. In the case of the delivery of a service to a business customer by electronic
4 transmission, the service is delivered in this state if and to the extent that the taxpayer's customer
5 receives the service in this state. If the taxpayer can determine the state or states where the service
6 is received, it shall assign the receipts from that sale to the state or states. For purposes of this
7 subsection 9(b)(2) of this section it is intended that the state or states where the service is received
8 reflect the location at which the service is directly used by the employees or designees of the
9 customer.

10 b. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states
11 where the customer actually receives the service, but has sufficient information regarding the
12 place of receipt from which it can reasonably approximate the state or states where the service is
13 received, it shall reasonably approximate the state or states.

14 c. Secondary Rule of Reasonable Approximation. In the case of the delivery of a service to a
15 business customer by electronic transmission where a taxpayer does not have sufficient
16 information from which it can determine or reasonably approximate the state or states in which
17 the service is received, the taxpayer shall reasonably approximate the state or states as set forth
18 in this administrative regulation. In these cases, unless the taxpayer can apply the safe harbor set
19 forth in this subsection the taxpayer shall reasonably approximate the state or states in which the
20 service is received as follows:

21 i. By assigning the receipts from the sale to the state where the contract of sale is principally
22 managed by the customer;

23 ii. If the state where the customer principally manages the contract is not reasonably

1 determinable, by assigning the receipts from the sale to the customer's place of order; and

2 iii. If the customer's place of order is not reasonably determinable, by assigning the receipts
3 from the sale using the customer's billing address; provided, however, if the taxpayer derives more
4 than 5% of its receipts from sales of services from any single customer, the taxpayer is required to
5 identify the state in which the contract of sale is principally managed by that customer.

6 d. Safe Harbor. In the case of the delivery of a service to a business customer by electronic
7 transmission a taxpayer may not be able to determine, or reasonably approximate the state or states
8 in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated at
9 subsection (9)(b)2.c. of this section, apply the safe harbor stated in this subsection. Under this safe
10 harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the
11 customer's billing address in a taxable year in which the taxpayer (1) engages in substantially
12 similar service transactions with more than 250 customers, whether business or individual, and (2)
13 does not derive more than 5% of its receipts from sales of all services from that customer. This
14 safe harbor applies only for purposes of services delivered by electronic transmission to a business
15 customer, and not otherwise.

16 e. Related Member Transactions. In the case of a sale of a service by electronic transmission
17 to a business customer that is a related member, the taxpayer may not use the secondary rule of
18 reasonable approximation in subparagraph iii of this section but may use the rule of reasonable
19 approximation and the safe harbor provided that the department may aggregate sales to related
20 members in determining whether the sales exceed 5% of receipts from sales of all services under
21 that safe harbor provision if necessary or appropriate to prevent distortion.

22 f. Examples. In these examples, unless otherwise stated, assume that the taxpayer is not related
23 to the customer to which the service is delivered. Also, unless otherwise stated, assume that the

1 taxpayer is taxable in each state to which its receipts would be assigned, so that there is no
2 requirement in these examples that the receipts must be eliminated from the denominator of the
3 taxpayer's receipts factor. Further, assume if relevant, unless otherwise stated, that the safe harbor
4 set forth in subparagraph d. above does not apply.

5 Example (i). Support Corp, a corporation that is based outside Kentucky, provides software
6 support and diagnostic services to individual and business customers that have previously
7 purchased certain software from third-party vendors. These individual and business customers are
8 located in Kentucky and other states. Support Corp supplies its services on a case-by-case basis
9 when directly contacted by its customer. Support Corp generally provides these services through
10 the Internet but sometimes provides these services by phone. In all cases, Support Corp verifies
11 the customer's account information before providing any service. Using the information that
12 Support Corp verifies before performing a service, Support Corp can determine where its services
13 are received, and therefore must assign its receipts to these locations. The receipts from sales made
14 to Support Corp's individual and business customers are in Kentucky to the extent that Support
15 Corp's services are received in Kentucky.

16 Example (ii). Online Corp, a corporation based outside Kentucky, provides web-based services
17 through the means of the Internet to individual customers who are residents in Kentucky and in
18 other states. These customers access Online Corp's web services primarily in their states of
19 residence, and sometimes, while traveling, in other states. For a substantial portion of its receipts
20 from the sale of services, Online Corp can either determine the state or states where the services
21 are received, or, where it cannot determine the state or states, it has sufficient information regarding
22 the place of receipt to reasonably approximate the state or states. However, Online Corp cannot
23 determine or reasonably approximate the state or states of receipt for all of the sales of its services.

1 Assuming that Online Corp reasonably believes, based on all available information, that the
2 geographic distribution of the receipts from sales for which it cannot determine or reasonably
3 approximate the location of the receipt of its services generally tracks those for which it does have
4 this information, Online Corp must assign to Kentucky the receipts from sales for which it does
5 not know the customers' locations in the same proportion as those receipts for which it has this
6 information.

7 Example (iii). Same facts as in Example (ii), except that Online Corp reasonably believes that
8 the geographic distribution of the receipts from sales for which it cannot determine or reasonably
9 approximate the location of the receipt of its web-based services do not generally track the sales
10 for which it does have this information. Online Corp must assign the receipts from sales of its
11 services for which it lacks information as provided to its individual customers using the customers'
12 billing addresses.

13 Example (iv). Same facts as in Example (iii), except that Online Corp is not taxable in one
14 state to which some of its receipts from sales would be otherwise assigned. The receipts that would
15 be otherwise assigned to that state are excluded from the denominator of Online Corp's receipts
16 factor.

17 Example (v). Net Corp, a corporation based outside Kentucky, provides web-based services to
18 a business customer, Business Corp, a company with offices in Kentucky and two neighboring
19 states. Particular employees of Business Corp access the services from computers in each Business
20 Corp office. Assume that Net Corp determines that Business Corp employees in Kentucky were
21 responsible for 75% of Business Corp's use of Net Corp's services, and Business Corp employees
22 in other states were responsible for 25% of Business Corp's use of Net Corp's services. In this
23 case, 75% of the receipts from the sale are received in Kentucky. Assume alternatively that Net

Corp lacks sufficient information regarding the location or locations where Business Corp's employees used the services to determine or reasonably approximate the location or locations. Under these circumstances, if Net Corp derives 5% or less of its receipts from sales to Business Corp, Net Corp must assign the receipts under the secondary rule of approximation to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp derives more than 5% of its receipts from sales of services to Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

Example (vi). Net Corp, a corporation based outside Kentucky, provides web-based services through the means of the Internet to more than 250 individual and business customers in Kentucky and in other states. Assume that for each customer Net Corp cannot determine the state or states where its web services are actually received, and lacks sufficient information regarding the place of receipt to reasonably approximate the state or states. Also assume that Net Corp does not derive more than 5% of its receipts from sales of services to a single customer. Net Corp may apply the safe harbor, and may assign its receipts using each customer's billing address. If Net Corp is not taxable in one or more states to which some of its receipts would be otherwise assigned, it must exclude those receipts from the denominator of its receipts factor.

(b) Services Delivered Electronically Through or "on Behalf of" an Individual or Business Customer. A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered electronically but one or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of

1 advertising on behalf of a customer to the customer's intended audience. A service delivered
2 electronically "through" a customer to third-party recipients is a service that is delivered
3 electronically to a customer for purposes of resale and subsequent electronic delivery in
4 substantially identical form to end users or other third- party recipients.

5 1. Rule of Determination. In the case of the delivery of a service by electronic transmission,
6 where the service is delivered electronically to end users or other third-party recipients through or
7 on behalf of the customer, the service is delivered in this state if and to the extent that the end users
8 or other third-party recipients are in this state. For example, in the case of the direct or indirect
9 delivery of advertising on behalf of a customer to the customer's intended audience by electronic
10 means, the service is delivered in this state to the extent that the audience for the advertising is in
11 this state. In the case of the delivery of a service to a customer that acts as an intermediary in
12 reselling the service in substantially identical form to third-party recipients, the service is delivered
13 in this state to the extent that the end users or other third-party recipients receive the services in
14 this state. These rules in this subsection apply whether the taxpayer's customer is an individual
15 customer or a business customer and whether the end users or other third-party recipients to which
16 the services are delivered through or on behalf of the customer are individuals or businesses.

17 2. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states
18 where the services are actually delivered to the end users or other third-party recipients either
19 through or on behalf of the customer, but has sufficient information regarding the place of delivery
20 from which it can reasonably approximate the state or states where the services are delivered, it
21 shall reasonably approximate the state or states.

22 3. Select Secondary Rules of Reasonable Approximation. a. If a taxpayer's service is the direct
23 or indirect electronic delivery of advertising on behalf of its customer to the customer's intended

1 audience, and if the taxpayer lacks sufficient information regarding the location of the audience
2 from which it can determine or reasonably approximate that location, the taxpayer shall reasonably
3 approximate the audience in a state for the advertising using the following secondary rules of
4 reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known
5 list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state
6 using a percentage that reflects the ratio of the state's subscribers in the specific geographic area
7 in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer
8 with less information about its audience, the taxpayer shall reasonably approximate the audience
9 in a state using the percentage that reflects the ratio of the state's population in the specific
10 geographic area in which the advertising is delivered relative to the total population in that area.

11 b. If a taxpayer's service is the delivery of a service to a customer that then acts as the
12 taxpayer's intermediary in reselling that service to end users or other third party recipients; or if
13 the taxpayer lacks sufficient information regarding the location of the end users or other third party
14 recipients from which it can determine or reasonably approximate that location; the taxpayer shall
15 reasonably approximate the extent to which the service is received in a state by using the
16 percentage that reflects the ratio of the state's population in the specific geographic area in which
17 the taxpayer's intermediary resells the services, relative to the total population in that area.

18 c. Examples. Assume in each of these examples that the taxpayer that provides the service is
19 taxable in this state and must apportion its income pursuant to KRS 141.120.

20 Example: Web Corp, a corporation that is based outside Kentucky, provides Internet content
21 to viewers in Kentucky and other states. Web Corp sells advertising space to business customers
22 pursuant to which the customers' advertisements will appear in connection with Web Corp's
23 Internet content. Web Corp receives a fee for running the advertisements that is determined by

1 reference to the number of times the advertisement is viewed or clicked upon by the viewers of its
2 website. Web Corp's sale of advertising space to its business customers is assigned to Kentucky
3 to the extent that the viewers of the Internet content are in Kentucky, as measured by viewings or
4 clicks. If Web Corp is unable to determine the actual location of its viewers, and lacks sufficient
5 information regarding the location of its viewers to reasonably approximate such location, Web
6 Corp must approximate the amount of its Kentucky sales by multiplying the amount of such sales
7 by a percentage that reflects the Kentucky population in the specific geographic area in which the
8 content containing the advertising is delivered relative to the total population in such area.

9 Example (ii). Retail Corp, a corporation that is based outside of Kentucky, sells tangible
10 property through its retail stores located in Kentucky and other states, and through a mail order
11 catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail
12 Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's
13 catalogs. In this case, the phone answering services of Answer Co are being delivered to Retail
14 Corp's customers and prospective customers. Therefore, Answer Co is delivering a service
15 electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp, and
16 must assign the proceeds from this service to the state or states from which the phone calls are
17 placed by such customers or prospective customers. If Answer Co cannot determine the actual
18 locations from which phone calls are placed, and lacks sufficient information regarding the
19 locations to reasonably approximate such locations, Answer Co must approximate the amount of
20 its Kentucky sales by multiplying the amount of its fee from Retail Corp by a percentage that
21 reflects the Kentucky population in the specific geographic area from which the calls are placed
22 relative to the total population in such area.

23 Example (iii). Web Corp, a corporation that is based outside of Kentucky, sells tangible

1 property to customers via its Internet website. Design Co designed and maintains Web Corp's
2 website, including making changes to the site based on customer feedback received through the
3 site. Design Co's services are delivered to Web Corp, the proceeds from which are assigned
4 pursuant to Section 5(9) of this administrative regulation. The fact that Web Corp's customers and
5 prospective customers incidentally benefit from Design Co's services, and may even interact with
6 Design Co in the course of providing feedback, does not transform the service into one delivered
7 "on behalf of" Web Corp to Web Corp's customers and prospective customers.

8 Example (iv). Wholesale Corp, a corporation that is based outside Kentucky, develops an
9 Internet-based information database outside Kentucky and enters into a contract with Retail Corp
10 whereby Retail Corp will market and sell access to this database to end users. Depending on the
11 facts, the provision of database access may be either the sale of a service or the license of intangible
12 property or may have elements of both. Assume that on the particular facts applicable in this
13 example, Wholesale Corp is selling database access in transactions properly characterized as
14 involving the performance of a service. When an end user purchases access to Wholesale Corp's
15 database from Retail Corp, Retail Corp in turn compensates Wholesale Corp in connection with
16 that transaction. In this case, Wholesale Corp's services are being delivered through Retail Corp
17 to the end user. Wholesale Corp must assign its sales to Retail Corp to the state or states in which
18 the end users receive access to Wholesale Corp's database. If Wholesale Corp cannot determine
19 the state or states where the end users actually receive access to Wholesale Corp's database, and
20 lacks sufficient information regarding the location from which the end users access the database
21 to reasonably approximate such location, Wholesale Corp must approximate the extent to which
22 its services are received by end users in Kentucky by using a percentage that reflects the ratio of
23 the Kentucky population in the specific geographic area in which Retail Corp regularly markets

1 and sells Wholesale Corp's database relative to the total population in such area. Note that it does
2 not matter for purposes of the analysis whether Wholesale Corp's sale of database access
3 constitutes a service or a license of intangible property, or some combination of both.

4 (10) Professional Services. (a) Except as otherwise provided in this subsection, professional
5 services are services that require specialized knowledge, and in some cases, require a professional
6 certification, license, or degree. These services include the performance of technical services that
7 require the application of specialized knowledge. Professional services include, without limitation:

8 1. Management services;

9 2. Bank and financial services;

10 3. Financial custodial services;

11 4. Investment and brokerage services;

12 5. Fiduciary services;

13 6. Tax preparation;

14 7. Payroll and accounting services;

15 8. Lending services;

16 9. Credit card services (including credit card processing services);

17 10. Data processing services;

18 11. Legal services;

19 12. Consulting services;

20 13. Video production services;

21 14. Graphic and other design services;

22 15. Engineering services; and

23 16. Architectural services.

1 (b) Overlap with Other Categories of Services. 1. Certain services that fall within the definition
2 of “professional services” set forth in this subsection are nevertheless treated as “in-person
3 services”, and are assigned under the rules of that subsection (7)(b) of this section. Specifically,
4 professional services that are physically provided in person by the taxpayer such as carpentry,
5 certain medical and dental services or child care services, where the customer or the customer’s
6 real or tangible property upon which the services are provided is in the same location as the service
7 provider at the time the services are performed, are “in-person services” and are assigned as such,
8 notwithstanding that they may also be considered to be “professional services.” However,
9 professional services where the service is of an intellectual or intangible nature, such as legal,
10 accounting, financial and consulting services, are assigned as professional services under the rules
11 of this subsection, notwithstanding the fact that these services may involve some amount of in-
12 person contact.

13 2. Professional services may in some cases include the transmission of one or more documents
14 or other communications by mail or by electronic means. In some cases, all or most
15 communications between the service provider and the service recipient may be by mail or by
16 electronic means. However, in these cases, despite this transmission, the assignment rules that
17 apply are those set forth in this subsection and not those set forth in subsection (8) of this section
18 pertaining to services delivered to a customer or through or on behalf of a customer.

19 (c) Assignment of Receipts. In the case of a professional service, it is generally possible to
20 characterize the location of delivery in multiple ways by emphasizing different elements of the
21 service provided, no one of which will consistently represent the market for the services.
22 Therefore, the location of delivery in the case of professional services is not susceptible to a general
23 rule of determination, and must be reasonably approximated. The assignment of receipts from a

1 sale of a professional service depends in many cases upon whether the customer is an individual
2 or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably
3 determine whether the customer is an individual or business customer, the taxpayer shall treat the
4 customer as a business customer. For purposes of assigning the receipts from a sale of a
5 professional service, a taxpayer's customer is the person that contracts for the service, irrespective
6 of whether another person pays for or also benefits from the taxpayer's services. In any instance
7 in which the taxpayer is not taxable in the state to which receipts from a sale is assigned, the
8 receipts are excluded from the denominator of the taxpayer's receipts factor.

9 1. General Rule. Receipts from sales of professional services are assigned in accordance with
10 Section 5 of this administrative regulation, other than those services described in:

- 11 a. subsection (10)(c)2. of this section. (architectural and engineering services);
12 b. subsection (10)(c)3. of this section. (services provided by a financial institution); and
13 c. subsection (10)(c)4. of this section. (transactions with related members)

14 d. Professional Services Delivered to Individual Customers. Except as otherwise provided in
15 this subsection, in any instance in which the service provided is a professional service and the
16 taxpayer's customer is an individual customer, the state or states in which the service is delivered
17 must be reasonably approximated as set forth in this subsection. In particular, the taxpayer shall
18 assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer
19 cannot reasonably identify the customer's state of primary residence, to the state of the customer's
20 billing address; provided, however, in any instance in which the taxpayer derives more than 5% of
21 its receipts from sales of all services from an individual customer, the taxpayer shall identify the
22 customer's state of primary residence and assign the receipts from the service or services provided
23 to that customer to that state.

1 e. Professional Services Delivered to Business Customers. Except as otherwise provided in
2 this subsection, in any instance in which the service provided is a professional service and the
3 taxpayer's customer is a business customer, the state or states in which the service is delivered
4 must be reasonably approximated as set forth in this section. In particular, unless the taxpayer may
5 use the safe harbor set forth in subsection (10)(f) of this section, the taxpayer shall assign the
6 receipts from the sale as follows: first, by assigning the receipts to the state where the contract of
7 sale is principally managed by the customer; second, if the place of customer management is not
8 reasonably determinable, to the customer's place of order; and third, if the customer place of order
9 is not reasonably determinable, to the customer's billing address; provided, however, in any
10 instance in which the taxpayer derives more than 5% of its receipts from sales of all services from
11 a customer, the taxpayer is required to identify the state in which the contract of sale is principally
12 managed by the customer.

13 f. Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in paragraph
14 (d) and (e) of this subsection, a taxpayer may assign its receipts from sales to a particular customer
15 based on the customer's billing address in any taxable year in which the taxpayer engages in
16 substantially similar service transactions with more than 250 customers, whether individual or
17 business, and does not derive more than 5% of its receipts from sales of all services from that
18 customer. This safe harbor applies only for purposes of subsection (10)(d) of this section, and not
19 otherwise.

20 2. Architectural and Engineering Services with respect to Real or Tangible Personal Property.
21 Architectural and engineering services with respect to real or tangible personal property are
22 professional services within the meaning of subsection (10) of this section. However, unlike in the
23 case of the general rule that applies to professional services,

1 a. The receipts from a sale of an architectural service are assigned to a state or states if and to
2 the extent that the services are with respect to real estate improvements located, or expected to be
3 located, in the state or states; and

4 b. The receipts from a sale of an engineering service are assigned to a state or states if and to
5 the extent that the services are with respect to tangible or real property located in the state or states,
6 including real estate improvements located in, or expected to be located in, the state or states.
7 These rules apply whether or not the customer is an individual or business customer. In any
8 instance in which architectural or engineering services are not described in subsection (10)(d)2. of
9 this section, the receipts from a sale of these services must be assigned under the general rule for
10 professional services.

11 3. Services Provided by Financial Organizations and Institutions. The apportionment rules that
12 apply to “financial organizations,” as defined by KRS 141.120(1)(c), are set forth in KRS
13 141.121(5) and this administrative regulation. In any instance in which a financial institution
14 performs services that are to be assigned pursuant to KRS 141.121(5) and this administrative
15 regulation, including, for example, financial custodial services, those services are considered
16 professional services within the meaning of subsection (10) of this section, and are assigned
17 according to the general rule for professional service transactions as set forth in subsection
18 (10)(c)1. of this section. Note that “financial institutions,” as defined by KRS 136.500(10), are
19 subject to the franchise tax imposed by KRS 136.505 and related statutes and administrative
20 regulations under KRS Chapter 136 and are exempt from the corporation income tax per KRS
21 141.040(1)(a) and the limited liability entity tax per KRS 141.0401(6)(a).

22 4. Related Member Transactions. In any instance in which the professional service is sold to a
23 related member, rather than applying the rule for professional services delivered to business

1 customers in subsection (10)(e) of this section, the state or states to which the service is assigned
2 is the place of receipt by the related member as reasonably approximated using the following
3 hierarchy: (1) if the service primarily relates to specific operations or activities of a related member
4 conducted in one or more locations, then to the state or states in which those operations or activities
5 are conducted in proportion to the related member's payroll at the locations to which the service
6 relates in the state or states; or (2) if the service does not relate primarily to operations or activities
7 of a related member conducted in particular locations, but instead relates to the operations of the
8 related member generally, then to the state or states in which the related member has employees,
9 in proportion to the related member's payroll in those states. The taxpayer may use the safe harbor
10 provided by this administrative regulation provided that the department may aggregate the receipts
11 from sales to related members in applying the 5% rule if necessary or appropriate to avoid
12 distortion.

13 5. Broadcast Advertising Services. Notwithstanding anything herein to the contrary, receipts
14 from a broadcaster's sale of advertising services to a broadcast customer are assigned to this state
15 if the commercial domicile of the broadcast customer is in this state. For purposes of this provision,
16 "advertising services" means an agreement to include the broadcast customer's advertising content
17 in the broadcaster's film programming.

18 6. Examples. Unless otherwise stated, assume in each of these examples, where relevant, that
19 the taxpayer is taxable in each state to which its receipts would be assigned, so that there is no
20 requirement in the examples that the receipts must be excluded from the denominator of the
21 taxpayer's receipts factor. Assume also that the customer is not a related member and that the safe
22 harbor does not apply.

23 Example (i). Broker Corp provides securities brokerage services to individual customers who

1 are resident in Kentucky and in other states. Assume that Broker Corp knows the state of primary
2 residence for many of its customers, and where it does not know this state of primary residence, it
3 knows the customer's billing address. Also, assume that Broker Corp does not derive more than
4 5% of its receipts from sales of all services from any one individual customer. If Broker Corp
5 knows its customer's state of primary residence, it shall assign the receipts to that state. If Broker
6 Corp does not know its customer's state of primary residence, but rather knows the customer's
7 billing address, it shall assign the receipts to that state.

8 Example (ii). Same facts as in Example (i), except that Broker Corp has several individual
9 customers from whom it derives, in each instance, more than 5% of its receipts from sales of all
10 services. Receipts from sales to customers from whom Broker Corp derives 5% or less of its
11 receipts from sales of all services must be assigned as described in Example (i). For each customer
12 from whom it derives more than 5% of its receipts from sales of all services, Broker Corp is
13 required to determine the customer's state of primary residence and must assign the receipts from
14 the services provided to that customer to that state. In any case in which a 5% customer's state of
15 primary residence is Kentucky, receipts from a sale made to that customer must be assigned to
16 Kentucky; in any case in which a 5% customer's state of primary residence is not Kentucky
17 receipts from a sale made to that customer are not assigned to Kentucky. Where receipts from a
18 sale are assigned to a state other than Kentucky, if the state of assignment (i.e., the state of primary
19 residence of the individual customer) is a state in which Broker Corp is not taxable, receipts from
20 the sales must be excluded from the denominator of Broker Corp's receipts factor.

21 Example (iii). Architecture Corp provides building design services as to buildings located, or
22 expected to be located, in Kentucky to individual customers who are resident in Kentucky and
23 other states, and to business customers that are based in Kentucky and other states. The receipts

1 from Architecture Corp's sales are assigned to Kentucky because the locations of the buildings to
2 which its design services relate are in Kentucky, or are expected to be in Kentucky. For purposes
3 of assigning these receipts, it is not relevant where, in the case of an individual customer, the
4 customer primarily resides or is billed for the services, and it is not relevant where, in the case of
5 a business customer, the customer principally manages the contract, placed the order for the
6 services, or is billed for the services. Further, these receipts are assigned to Kentucky even if
7 Architecture Corp's designs are either physically delivered to its customer in paper form in a state
8 other than Kentucky or are electronically delivered to its customer in a state other than Kentucky.

9 Example (iv). Law Corp provides legal services to individual clients who are residents in
10 Kentucky and in other states. In some cases, Law Corp may prepare one or more legal documents
11 for its client as a result of these services and/or the legal work may be related to litigation or a legal
12 matter that is ongoing in a state other than where the client is resident. Assume that Law Corp
13 knows the state of primary residence for many of its clients, and where it does not know this state
14 of primary residence, it knows the client's billing address. Also, assume that Law Corp does not
15 derive more than 5% of its receipts from sales of all services from any one individual client. If
16 Law Corp knows its client's state of primary residence, it shall assign the receipts to that state. If
17 Law Corp does not know its client's state of primary residence, but rather knows the client's billing
18 address, it shall assign the receipts to that state. For purposes of the analysis it is irrelevant whether
19 the legal documents relating to the service are mailed or otherwise delivered to a location in another
20 state, or the litigation or other legal matter that is the underlying predicate for the services is in
21 another state.

22 Example (v). Same facts as in Example (iv), except that Law Corp provides legal services to
23 several individual clients who it knows have a primary residence in a state where Law Corp is not

1 taxable. Receipts from these services are excluded from the denominator of Law Corp's receipts
2 factor even if the billing address of one or more of these clients is in a state in which Law Corp is
3 taxable, including Kentucky.

4 Example (vi). Law Corp provides legal services to several multistate business clients. In each
5 case, Law Corp knows the state in which the agreement for legal services that governs the client
6 relationship is principally managed by the client. In one case, the agreement is principally managed
7 in Kentucky; in the other cases, the agreement is principally managed in a state other than
8 Kentucky. If the agreement for legal services is principally managed by the client in Kentucky the
9 receipts from sale of the services are assigned to Kentucky; in the other cases, the receipts are not
10 assigned to Kentucky. In the case of receipts that are assigned to Kentucky, the receipts are so
11 assigned even if (1) the legal documents relating to the service are mailed or otherwise delivered
12 to a location in another state, or (2) the litigation or other legal matter that is the underlying
13 predicate for the services is in another state.

14 Example (vii). Same facts as in Example (vi), except that Law Corp is not taxable in one of the
15 states other than Kentucky in which Law Corp's agreement for legal services that governs the
16 client relationship is principally managed by the business client. Receipts from these latter services
17 are excluded from the denominator of Law Corp's receipts factor.

18 Example (viii). Consulting Corp, a company that provides consulting services to law firms and
19 other customers, is hired by Law Corp in connection with legal representation that Law Corp
20 provides to Client Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial
21 being conducted by Law Corp on behalf of Client Co. Client Co pays for Consulting Corp's
22 services directly. Assuming that Consulting Corp knows that its agreement with Law Corp is
23 principally managed by Law Corp in Kentucky, the receipts from the sale of Consulting Corp's

1 services are assigned to Kentucky. It is not relevant for purposes of the analysis that Client Co is
2 the ultimate beneficiary of Consulting Corp's services, or that Client Co pays for Consulting
3 Corp's services directly.

4 Example (ix). Bank Corp provides financial custodial services, including the safekeeping of
5 some of its customers' financial assets, to 100 individual customers who are resident in Kentucky
6 and in other states. Assume for purposes of this example that Bank Corp knows the state of primary
7 residence for many of its customers, and where it does not know the state of primary residence, it
8 knows the customer's billing address. Also assume that Bank Corp does not derive more than 5%
9 of its receipts from sales of all of its services from any single customer. Note that because Bank
10 Corp does not have more than 250 customers, it may not apply the safe harbor for professional
11 services stated in Section 5(10) of this administrative regulation. If Bank Corp knows its
12 customer's state of primary residence, it must assign the receipts to that state. If Bank Corp does
13 not know its customer's state of primary residence, but rather knows the customer's billing
14 address, it must assign the receipts to that state. Bank Corp's receipts are assigned to Kentucky if
15 the customer's state of primary residence (or billing address, in cases where it does not know the
16 customer's state of primary residence) is in Kentucky, even if Bank Corp's financial custodial
17 work, including the safekeeping of the customer's financial assets, takes place in a state other than
18 Kentucky.

19 Example (x). Same facts as Example (ix), except that Bank Corp has more than 250 customers,
20 individual or business. Bank Corp may apply the safe harbor for professional services stated in
21 Section 5(10)(f) of this administrative regulation, and may assign its receipts from sales to a state
22 or states using each customer's billing address.

23 Example (xi). Same facts as Example (x), except that Bank Corp derives more than 5% of its

1 receipts from sales from a single individual customer. As to the sales made to this customer, Bank
2 Corp is required to determine the individual customer's state of primary residence and must assign
3 the receipts from the service or services provided to that customer to that state. Receipts from sales
4 to all other customers are assigned as described in Example (x).

5 Example (xii). Advisor Corp, a corporation that provides investment advisory services,
6 provides these advisory services to Investment Co. Investment Co is a multistate business client
7 of Advisor Corp that uses Advisor Corp's services in connection with investment accounts that it
8 manages for individual clients, who are the ultimate beneficiaries of Advisor Corp's services.
9 Assume that Investment Co's individual clients are persons that are residents in numerous states,
10 which may or may not include Kentucky. Assuming that Advisor Corp knows that its agreement
11 with Investment Co is principally managed by Investment Co in Kentucky, receipts from the sale
12 of Advisor Corp's services are assigned to Kentucky. It is not relevant for purposes of the analysis
13 that the ultimate beneficiaries of Advisor Corp's services may be Investment Co's clients, who are
14 residents of numerous states.

15 Example (xiii). Advisor Corp provides investment advisory services to Investment Fund LP, a
16 partnership that invests in securities and other assets. Assuming that Advisor Corp knows that its
17 agreement with Investment Fund LP is principally managed by Investment Fund LP in Kentucky,
18 receipts from the sale of Advisor Corp's services are assigned to Kentucky. Note that it is not
19 relevant for purposes of the analysis that the partners in Investment Fund LP are residents of
20 numerous states.

21 Example (xiv). Design Corp is a corporation based outside Kentucky that provides graphic
22 design and similar services in Kentucky and in neighboring states. Design Corp enters into a
23 contract at a location outside Kentucky with an individual customer to design fliers for the

1 customer. Assume that Design Corp does not know the individual customer's state of primary
2 residence and does not derive more than 5% of its receipts from sales of services from the
3 individual customer. All of the design work is performed outside Kentucky. Receipts from the
4 sales are in Kentucky if the customer's billing address is in Kentucky.

5 ____ (11) License or Lease of Intangible Property. (a) 1. The receipts from the license of intangible
6 property are in this state if and to the extent the intangible is used in this state. In general, the term
7 "use" is construed to refer to the location of the taxpayer's market for the use of the intangible
8 property that is being licensed and is not to be construed to refer to the location of the property or
9 payroll of the taxpayer. The rules that apply to determine the location of the use of intangible
10 property in the context of several specific types of licensing transactions are set forth in subsection
11 (11)(b)-(f) of this section. For purposes of the rules set forth in this subsection, a lease of intangible
12 property is to be treated the same as a license of intangible property.

13 ____ 2. In general, a license of intangible property that conveys all substantial rights in that property
14 is treated as a sale of intangible property for purposes of this administrative regulation. Note,
15 however, that for purposes of subsection (11) and (12) of this section, a sale or exchange of
16 intangible property is treated as a license of that property where the receipts from the sale or
17 exchange derived from payments that are contingent on the productivity, use or disposition of the
18 property.

19 ____ 3. Intangible property licensed as part of the sale or lease of tangible property is treated under
20 Section 5 of this administrative regulation as the sale or lease of tangible property.

21 ____ 4. In any instance in which the taxpayer is not taxable in the state to which the receipts from
22 the license of intangible property are assigned, the receipts are excluded from the denominator of
23 the taxpayer's receipts factor.

1 5. Nothing in this administrative regulation shall be construed to allow or require inclusion of
2 receipts in the receipts factor that are not included in the definition of “receipts” pursuant to KRS
3 141.120(1)(e), or that are excluded from the numerator and the denominator of the receipts factor
4 pursuant to KRS 141.120(11)(a)(4)(b)iii. So, to the extent that the transfer of either a security or
5 business “goodwill” or similar intangible value, including, without limitation, “going concern
6 value” or “workforce in place,” may be characterized as a license or lease of intangible property,
7 receipts from such transaction shall be excluded from the numerator and the denominator of the
8 taxpayer’s receipts factor.

9 (b) License of a Marketing Intangible. Where a license is granted for the right to use intangible
10 property in connection with the sale, lease, license, or other marketing of goods, services, or other
11 items (i.e., a marketing intangible) to a consumer, the royalties or other licensing fees paid by the
12 licensee for that marketing intangible are assigned to this state to the extent that those fees are
13 attributable to the sale or other provision of goods, services, or other items purchased or otherwise
14 acquired by consumers or other ultimate customers in this state. Examples of a license of a
15 marketing intangible include, without limitation, the license of a service mark, trademark, or trade
16 name; certain copyrights; the license of a film, television or multimedia production or event for
17 commercial distribution; and a franchise agreement. In each of these instances, the license of the
18 marketing intangible is intended to promote consumer sales. In the case of the license of a
19 marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its
20 receipts that is attributable to this state, it shall assign that amount or proportion to this state. In the
21 absence of actual evidence of the amount or proportion of the licensee's receipts that are derived
22 from consumers in this state, the portion of the licensing fee to be assigned to this state must be
23 reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the

1 population of this state in the specific geographic area in which the licensee makes material use of
2 the intangible property to regularly market its goods, services or other items relative to the total
3 population in that area. If the license of a marketing intangible is for the right to use the intangible
4 property in connection with sales or other transfers at wholesale rather than directly to retail
5 customers, the portion of the licensing fee to be assigned to this state must be reasonably
6 approximated by multiplying the total fee by a percentage that reflects the ratio of the population
7 of this state in the specific geographic area in which the licensee's goods, services, or other items
8 are ultimately and materially marketed using the intangible property relative to the total population
9 of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in
10 the marketing of items outside the United States, the fees from licensing those marketing intangible
11 will be presumed to be derived from within the United States.

12 (c) License of a Production Intangible. If a license is granted for the right to use intangible
13 property other than in connection with the sale, lease, license, or other marketing of goods,
14 services, or other items, and the license is to be used in a production capacity (a "production
15 intangible"), the licensing fees paid by the licensee for that right are assigned to this state to the
16 extent that the use for which the fees are paid takes place in this state. Examples of a license of a
17 production intangible include, without limitation, the license of a patent, a copyright, or trade
18 secrets to be used in a manufacturing process, where the value of the intangible lies predominately
19 in its use in that process. In the case of a license of a production intangible to a member other than
20 a related member where the location of actual use is unknown, it is presumed that the use of the
21 intangible property takes place in the state of the licensee's commercial domicile (where the
22 licensee is a business) or the licensee's state of primary residence (where the licensee is an
23 individual). If the department can reasonably establish that the actual use of intangible property

1 pursuant to a license of a production intangible takes place in part in this state, it is presumed that
2 the entire use is in this state except to the extent that the taxpayer can demonstrate that the actual
3 location of a portion of the use takes place outside this state. In the case of a license of a production
4 intangible to a related member, the taxpayer must assign the receipts to where the intangible
5 property is actually used.

6 (d) License of a Broadcasting Intangible. Where a broadcaster grants a license to a broadcast
7 customer for the right to use film programming, the licensing fees paid by the licensee for such
8 right are assigned to this state to the extent that the broadcast customer is located in this state. In
9 the case of business customers, the broadcast customer's location shall be determined using the
10 broadcast customer's commercial domicile. In the case of individual customers, the broadcast
11 customer's location shall be determined using the address of the broadcast customer listed in the
12 broadcaster's records.

13 (e) License of a Mixed Intangible. If a license of intangible property includes both a license of
14 a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees
15 to be paid in each instance are separately and reasonably stated in the licensing contract, the
16 department will accept that separate statement for purposes of this administrative regulation. If a
17 license of intangible property includes both a license of a marketing intangible and a license of a
18 production intangible and the fees to be paid in each instance are not separately and reasonably
19 stated in the contract, it is presumed that the licensing fees are paid entirely for the license of the
20 marketing intangible except to the extent that the taxpayer or the department can reasonably
21 establish otherwise.

22 (f) License of Intangible Property where Substance of Transaction Resembles a Sale of Goods
23 or Services. 1. In some cases, the license of intangible property will resemble the sale of an

1 electronically-delivered good or service rather than the license of a marketing intangible or a
2 production intangible. In these cases, the receipts from the licensing transaction are assigned by
3 applying the rules set forth in subsection (9)(a) and (b) of this section, as if the transaction were a
4 service delivered to an individual or business customer or delivered electronically through an
5 individual or business customer, as applicable. Examples of transactions to be assigned under this
6 subsection include, without limitation, the license of database access, the license of access to
7 information, the license of digital goods and the license of certain software (e.g., where the
8 transaction is not the license of pre-written software that is treated as the sale of tangible personal
9 property.

10 2. Sublicenses. Pursuant to subsection (11)(f). of this section, the rules of subsection (9)(b)
11 may apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the
12 intangible property to end users as if the transaction were a service delivered electronically through
13 a customer to end users. In particular, the rules set forth in subsection (9)(b) that apply to services
14 delivered electronically to a customer for purposes of resale and subsequent electronic delivery in
15 substantially identical form to end users or other recipients may also apply with respect to licenses
16 of intangible property for purposes of sublicense to end users. For this purpose, the intangible
17 property sublicensed to an end user shall not fail to be substantially identical to the property that
18 was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights
19 with respect to that property (e.g., because the sublicensee's rights are limited to its own use of the
20 property and do not include the ability to grant a further sublicense), or because that property is
21 bundled with additional services or items of property.

22 3. Examples. In these examples, unless otherwise stated, assume that the taxpayer is taxable
23 in each state to which its receipts would be assigned so that there is no requirement in these

1 examples that the receipts must be eliminated from the denominator of the taxpayer's receipts
2 factor. Also assume that the customer is not a related member.

3 Example (i). Crayon Corp and Dealer Co enter into a license contract under which Dealer Co
4 as licensee is permitted to use trademarks that are owned by Crayon Corp in connection with
5 Dealer Co's sale of certain products to retail customers. Under the contract, Dealer Co is required
6 to pay Crayon Corp a licensing fee that is a fixed percentage of the total volume of monthly sales
7 made by Dealer Co of products using the Crayon Corp trademarks. Under the contract, Dealer Co
8 is permitted to sell the products at multiple store locations, including store locations that are both
9 within and without Kentucky. Further, the licensing fees that are paid by Dealer Co are broken out
10 on a per- store basis. The licensing fees paid to Crayon Corp by Dealer Co represent fees from the
11 license of a marketing intangible. The portion of the fees to be assigned to Kentucky are
12 determined by multiplying the fees by a percentage that reflects the ratio of Dealer Co's receipts
13 that are derived from its Kentucky stores relative to Dealer Co's total receipts.

14 Example (ii). Network Corp is a broadcaster that licenses rights to its film programming to
15 both platform distribution companies and individual customers. Platform distribution companies
16 pay licensing fees to Network Corp for the rights to distribute Network Corp's film programming
17 to the platform distribution companies' customers. Network Corp's individual customers pay
18 access fees to Network Corp for the right to directly access and view Network Corp's film
19 programming. Network Corp's receipts from each platform distribution company will be assigned
20 to Kentucky if the broadcast customer's commercial domicile is in Kentucky. Network Corp's
21 receipts from each individual broadcast customer will be assigned to Kentucky if the address of
22 the broadcast customer listed in the broadcaster's records is in Kentucky.

23 Example (iii). Moniker Corp enters into a license contract with Wholesale Co. Pursuant to the

1 contract Wholesale Co is granted the right to use trademarks owned by Moniker Corp to brand
2 sports equipment that is to be manufactured by Wholesale Co or an unrelated entity, and to sell the
3 manufactured equipment to unrelated companies that will ultimately market the equipment to
4 consumers in a specific geographic region, including a foreign country. The license agreement
5 confers a license of a marketing intangible, even though the trademarks in question will be affixed
6 to property to be manufactured. In addition, the license of the marketing intangible is for the right
7 to use the intangible property in connection with sales to be made at wholesale rather than directly
8 to retail customers. The component of the licensing fee that constitutes the Kentucky receipts of
9 Moniker Corp is determined by multiplying the amount of the fee by a percentage that reflects the
10 ratio of the Kentucky population in the specific geographic region relative to the total population
11 in that region. If Moniker Corp is able to reasonably establish that the marketing intangible was
12 materially used throughout a foreign country, then the population of that country will be included
13 in the population ratio calculation. However, if Moniker Corp is unable to reasonably establish
14 that the marketing intangible was materially used in the foreign country in areas outside a particular
15 major city; then none of the foreign country's population beyond the population of the major city
16 is include in the population ratio calculation. If Moniker Corp is not taxable in any state (including
17 a foreign country) in which Wholesale Co's ultimate consumers are located, the receipts that would
18 be assigned to that state are excluded from the denominator of Moniker Corp's receipts factor.

19 Example (iv). Formula, Inc and Appliance Co enter into a license contract under which
20 Appliance Co is permitted to use a patent owned by Formula, Inc to manufacture appliances. The
21 license contract specifies that Appliance Co is to pay Formula, Inc a royalty that is a fixed
22 percentage of the gross receipts from the products that are later sold. The contract does not specify
23 any other fees. The appliances are both manufactured and sold in Kentucky and several other

1 states. Assume the licensing fees are paid for the license of a production intangible, even though
2 the royalty is to be paid based upon the sales of a manufactured product (i.e., the license is not one
3 that includes a marketing intangible). Because the department can reasonably establish that the
4 actual use of the intangible property takes place in part in Kentucky, the royalty is assigned based
5 to the location of that use rather than to location of the licensee's commercial domicile. It is
6 presumed that the entire use is in Kentucky except to the extent that the taxpayer can demonstrate
7 that the actual location of some or all of the use takes place outside Kentucky. Assuming that
8 Formula, Inc can demonstrate the percentage of manufacturing that takes place in Kentucky using
9 the patent relative to the manufacturing in other states, that percentage of the total licensing fee
10 paid to Formula, Inc under the contract will constitute Formula, Inc's Kentucky receipts.

11 Example (v). Axel Corp enters into a license agreement with Biker Co in which Biker Co is
12 granted the right to produce motor scooters using patented technology owned by Axel Corp, and
13 also to sell the scooters by marketing the fact that the scooters were manufactured using the special
14 technology. The contract is a license of both a marketing and production intangible, i.e., a mixed
15 intangible. The scooters are manufactured outside Kentucky. Assume that Axel Corp lacks actual
16 information regarding the proportion of Biker Co.'s receipts that are derived from Kentucky
17 customers. Also assume that Biker Co is granted the right to sell the scooters in a U.S. geographic
18 region in which the Kentucky population constitutes 25% of the total population during the period
19 in question. The licensing contract requires an upfront licensing fee to be paid by Biker Co to Axel
20 Corp and does not specify what percentage of the fee derives from Biker Co's right to use Axel
21 Corp's patented technology. Because the fees for the license of the marketing and production
22 intangible are not separately and reasonably stated in the contract, it is presumed that the licensing
23 fees are paid entirely for the license of a marketing intangible, unless either the taxpayer or the

1 department reasonably establishes otherwise. Assuming that neither member establishes
2 otherwise, 25% of the licensing fee constitutes Kentucky receipts.

3 Example (vi). Same facts as Example (v), except that the license contract specifies separate
4 fees to be paid for the right to produce the motor scooters and for the right to sell the scooters by
5 marketing the fact that the scooters were manufactured using the special technology. The licensing
6 contract constitutes both the license of a marketing intangible and the license of a production
7 intangible. Assuming that the separately stated fees are reasonable, the department will: (1) assign
8 no part of the licensing fee paid for the production intangible to Kentucky, and (2) assign 25% of
9 the licensing fee paid for the marketing intangible to Kentucky.

10 Example (vii). Better Burger Corp, which is based outside Kentucky, enters into franchise
11 contracts with franchisees that agree to operate Better Burger restaurants as franchisees in various
12 states. Several of the Better Burger Corp franchises are in Kentucky. In each case, the franchise
13 contract between the individual and Better Burger provides that the franchisee is to pay Better
14 Burger Corp an upfront fee for the receipt of the franchise and monthly franchise fees, which cover,
15 among other things, the right to use the Better Burger name and service marks, food processes and
16 cooking know-how, as well as fees for management services. The upfront fees for the receipt of
17 the Kentucky franchises constitute fees paid for the licensing of a marketing intangible. These fees
18 constitute Kentucky receipts because the franchises are for the right to make Kentucky sales. The
19 monthly franchise fees paid by Kentucky franchisees constitute fees paid for (1) the license of
20 marketing intangibles (the Better Burger name and service marks), (2) the license of production
21 intangibles (food processes and know-how), and (3) personal services (management fees). The
22 fees paid for the license of the marketing intangibles and the production intangibles constitute
23 Kentucky receipts because in each case the use of the intangibles is to take place in Kentucky. The

1 fees paid for the personal services are to be assigned pursuant to this section.

2 Example (viii). Online Corp, a corporation based outside Kentucky, licenses an information
3 database through the means of the Internet to individual customers that are resident in Kentucky
4 and in other states. These customers access Online Corp's information database primarily in their
5 states of residence, and sometimes, while traveling, in other states. The license is a license of
6 intangible property that resembles a sale of goods or services and are assigned in accordance with
7 subsection (11)(f) of this section. If Online Corp can determine or reasonably approximate the
8 state or states where its database is accessed, it must do so. Assuming that Online Corp cannot
9 determine or reasonably approximate the location where its database is accessed, Online Corp must
10 assign the receipts made to the individual customers using the customers' billing addresses to the
11 extent known. Assume for purposes of this example that Online Corp knows the billing address
12 for each of its customers. In this case, Online Corp's receipts from sales made to its individual
13 customers are in Kentucky in any case in which the customer's billing address is in Kentucky.

14 Example (ix). Net Corp, a corporation based outside Kentucky, licenses an information
15 database through the means of the Internet to a business customer, Business Corp, a company with
16 offices in Kentucky and two neighboring states. The license is a license of intangible property that
17 resembles a sale of goods or services and are assigned in accordance with subsection (11)(f) of
18 this section. Assume that Net Corp cannot determine where its database is accessed but reasonably
19 approximates that 75% of Business Corp's database access took place in Kentucky, and 25% of
20 Business Corp's database access took place in other states. In that case, 75% of the receipts from
21 database access is in Kentucky. Assume alternatively that Net Corp lacks sufficient information
22 regarding the location where its database is accessed to reasonably approximate the location.
23 Under these circumstances, if Net Corp derives 5% or less of its receipts from database access

1 from Business Corp, Net Corp must assign the receipts under Section 5(9)(b) of this administrative
2 regulation to the state where Business Corp principally managed the contract, or if that state is not
3 reasonably determinable to the state where Business Corp placed the order for the services, or if
4 that state is not reasonably determinable to the state of Business Corp's billing address. If Net Corp
5 derives more than 5% of its receipts from database access from Business Corp, Net Corp is
6 required to identify the state in which its contract of sale is principally managed by Business Corp
7 and must assign the receipts to that state.

8 Example (x). Net Corp, a corporation based outside Kentucky, licenses an information
9 database through the means of the Internet to more than 250 individual and business customers in
10 Kentucky and in other states. The license is a license of intangible property that resembles a sale
11 of goods or services and receipts from that license are assigned in accordance with Section 5(11)(f)
12 of this administrative regulation. Assume that Net Corp cannot determine or reasonably
13 approximate the location where its information database is accessed. Also assume that Net Corp
14 does not derive more than 5% of its receipts from sales of database access from any single
15 customer. Net Corp may apply the safe harbor stated in Section 5(9)(a)2.d. of this administrative
16 regulation, and may assign its receipts to a state or states using each customer's billing address. If
17 Net Corp is not taxable in one or more states to which some of its receipts would be otherwise
18 assigned, it must exclude those receipts from the denominator of its receipts factor.

19 Example (xi). Web Corp, a corporation based outside of Kentucky, licenses an Internet-based
20 information database to business customers who then sublicense the database to individual end
21 users that are resident in Kentucky and in other states. These end users access Web Corp's
22 information database primarily in their states of residence, and sometimes, while traveling, in other
23 states. Web Corp's license of the database to its customers includes the right to sublicense the

1 database to end users, while the sublicenses provide that the rights to access and use the database
2 are limited to the end users' own use and prohibit the individual end users from further sublicensing
3 the database. Web Corp receives a fee from each customer based upon the number of sublicenses
4 issued to end users. The license is a license of intangible property that resembles a sale of goods
5 or services and are assigned by applying the rules set forth in Section 5(9)(b) of this administrative
6 regulation. If Web Corp can determine or reasonably approximate the state or states where its
7 database is accessed by end users, it must do so. Assuming that Web Corp lacks sufficient
8 information from which it can determine or reasonably approximate the location where its database
9 is accessed by end users, Web Corp must approximate the extent to which its database is accessed
10 in Kentucky using a percentage that represents the ratio of the Kentucky population in the specific
11 geographic area in which Web Corp's customer sublicenses the database access relative to the total
12 population in that area.

13 (12) Sale of Intangible Property. (a) Assignment of Receipts. The assignment of receipts to
14 a state or states in the instance of a sale or exchange of intangible property depends upon the nature
15 of the intangible property sold. For purposes of this subsection, a sale or exchange of intangible
16 property includes a license of that property where the transaction is treated for tax purposes as a
17 sale of all substantial rights in the property and the receipts from transaction are not contingent on
18 the productivity, use or disposition of the property. For the rules that apply where the consideration
19 for the transfer of rights is contingent on the productivity, use or disposition of the property, see
20 KRS 141.120(11)(a)(4)(b)ii.

21 1. Contract Right or Government License that Authorizes Business Activity in Specific
22 Geographic Area. In the case of a sale or exchange of intangible property where the property sold
23 or exchanged is a contract right, government license or similar intangible property that authorizes

1 the holder to conduct a business activity in a specific geographic area, the receipts from the sale
2 are assigned to a state if and to the extent that the intangible property is used or is authorized to be
3 used within the state. If the intangible property is used or may be used only in Kentucky, the
4 taxpayer shall assign the receipts from the sale to this state. If the intangible property is used or is
5 authorized to be used in this state and one or more other states, the taxpayer shall assign the receipts
6 from the sale to this state to the extent that the intangible property is used in or authorized for use
7 in this state, through the means of a reasonable approximation.

8 2. Sale that Resembles a License (Receipts are Contingent on Productivity, Use or Disposition
9 of the Intangible Property). In the case of a sale or exchange of intangible property where the
10 receipts from the sale or exchange are contingent on the productivity, use or disposition of the
11 property, the receipts from the sale are assigned by applying the rules set forth in subsection (11)
12 of this section (pertaining to the license or lease of intangible property).

13 3. Sale that Resembles a Sale of Goods and Services. In the case of a sale or exchange of
14 intangible property where the substance of the transaction resembles a sale of goods or services
15 and where the receipts from the sale or exchange do not derive from payments contingent on the
16 productivity, use or disposition of the property, the receipts from the sale are assigned by applying
17 the rules set forth in subsection (11)(f) of this section (relating to licenses of intangible property
18 that resemble sales of goods and services). Examples of these transactions include those that are
19 analogous to the license transactions cited as examples in subsection (11)(f)3. of this section.

20 4. Excluded Receipts. Receipts from the sale of intangible property are not included in the
21 receipts factor in any case in which the sale does not give rise to receipts within the meaning of
22 KRS 141.120(1)(e). In addition, pursuant to KRS 141.120(11)(a)(4)(b)(iii) receipts from the sale
23 of intangible property are excluded from the numerator and the denominator of the taxpayer's

1 receipts factor if the receipts are not referenced in KRS 141.120(11)(a)(4)(b)(i) or KRS
2 141.120(11)(a)(4)(b)(ii). The sale of intangible property that is excluded from the numerator and
3 denominator of the taxpayer's receipts factor under KRS 141.120(11)(a)(4)(b)(iii) includes,
4 without limitation, the sale of a partnership interest, the sale of business "goodwill," the sale of an
5 agreement not to compete, or similar intangible value. Also, in any instance in which, the state to
6 which the receipts from a sale is to be assigned can be determined or reasonably approximated,
7 but where the taxpayer is not taxable in such state, the receipts that would otherwise be assigned
8 to such state shall be excluded from the denominator of the taxpayer's receipts factor.

9 5. Examples. In these examples, unless otherwise stated, assume that the taxpayer is taxable
10 in each state to which some of its receipts would be assigned, so that there is no requirement in
11 these examples that the receipts to other states must be excluded from the taxpayer's denominator
12 pursuant to subsection (11)(a) of this section and KRS 141.120(11)(c).

13 Example (i). Airline Corp, a corporation based outside Kentucky, sells its rights to use several
14 gates at an airport located in Kentucky to Buyer Corp, a corporation that is based outside Kentucky.
15 The contract of sale is negotiated and signed outside of Kentucky. The receipts from the sale are
16 in Kentucky because the intangible property sold is a contract right that authorizes the holder to
17 conduct a business activity solely in Kentucky.

18 Example (ii). Wireless Corp, a corporation based outside Kentucky, sells a license issued by
19 the Federal Communications Commission (FCC) to operate wireless telecommunications services
20 in a designated area in Kentucky to Buyer Corp, a corporation that is based outside Kentucky. The
21 contract of sale is negotiated and signed outside of Kentucky. The receipts from the sale are in
22 Kentucky because the intangible property sold is a government license that authorizes the holder
23 to conduct business activity solely in Kentucky.

1 Example (iii). Same facts as in Example (ii) except that Wireless Corp sells to Buyer Corp an
2 FCC license to operate wireless telecommunications services in a designated area in Kentucky and
3 an adjacent state. Wireless Corp must attempt to reasonably approximate the extent to which the
4 intangible property is used in or may be used in Kentucky. For purposes of making this reasonable
5 approximation, Wireless Corp may rely upon credible data that identifies the percentage of persons
6 that use wireless telecommunications in the two states covered by the license.

7 Example (iv). Same facts as in Example (iii) except that Wireless Corp is not taxable in the
8 adjacent state in which the FCC license authorizes it to operate wireless telecommunications
9 services. The receipts paid to Wireless Corp that would be assigned to the adjacent state must be
10 excluded from the denominator of Wireless Corp's receipts factor.

11 Example (v). Sports League Corp, a corporation that is based outside Kentucky, sells the rights
12 to broadcast the sporting events played by the teams in its league in all 50 U.S. states to Network
13 Corp. Although the games played by Sports League Corp will be broadcast in all 50 states, the
14 games are of greater interest in the southeast region of the country, including Kentucky. Because
15 the intangible property sold is a contract right that authorizes the holder to conduct a business
16 activity in a specified geographic area, Sports League Corp must attempt to reasonably
17 approximate the extent to which the intangible property is used in or may be used in Kentucky.
18 For purposes of making this reasonable approximation, Sports League Corp may rely upon
19 audience measurement information that identifies the percentage of the audience for its sporting
20 events in Kentucky and the other states.

21 Example (vi). Same facts as in Example (v), except that Sports League Corp is not taxable in
22 one state. The receipts paid to Sports League Corp that would be assigned to that state must be
23 excluded from the denominator of Sports League Corp's receipts factor.

1 Example (vii). Inventor Corp, a corporation that is based outside Kentucky, sells patented
2 technology that it has developed to Buyer Corp, a business customer that is based in Kentucky.
3 Assume that the sale is not one in which the receipts derive from payments that are contingent on
4 the productivity, use, or disposition of the property. Inventor Corp understands that Buyer Corp is
5 likely to use the patented technology in Kentucky, but the patented technology can be used
6 anywhere (i.e., the rights sold are not rights that authorize the holder to conduct a business activity
7 in a specific geographic area). The receipts from the sale of the patented technology are excluded
8 from the numerator and denominator of Inventor Corp's receipts factor.

9 (13) Special Rules. (a) Software Transactions. A license or sale of pre-written software for
10 purposes other than commercial reproduction (or other exploitation of the intellectual property
11 rights) transferred on a tangible medium is treated as the sale of tangible personal property, rather
12 than as either the license or sale of intangible property or the performance of a service. In these
13 cases, the receipts are in this state as determined under the rules for the sale of tangible personal
14 property set forth under KRS 141.120(10) and related administrative regulations. In all other cases,
15 the receipts from a license or sale of software are to be assigned to this state as determined
16 otherwise under this administrative regulation. (e.g., depending on the facts, as the development
17 and sale of custom software, see subsection (8) of this section, as a license of a marketing
18 intangible, see subsection (11)(b) of this section, as a license of a production intangible, see
19 subsection (11)(c) of this section, as a license of intangible property where the substance of the
20 transaction resembles a sale of goods or services, see subsection (11)(f) of this section, or as a sale
21 of intangible property, see subsection (12) of this section.

22 (b) Sales or Licenses of Digital Goods or Services. 1. In the case of a sale or license of digital
23 goods or services, including, among other things, the sale of various video, audio, and software

1 products, or similar transactions, the receipts from the sale or license are assigned by applying the
2 same rules as are set forth in subsection (9)(a) and (b) or subsection 10(c)(5) of this section, as if
3 the transaction were a service delivered to an individual or business customer or delivered through
4 or on behalf of an individual or business customer. For purposes of the analysis, it is not relevant
5 what the terms of the contractual relationship are or whether the sale or license might be
6 characterized, depending upon the particular facts, as, for example, the sale or license of intangible
7 property or the performance of a service.

8 2. Providers of communication services, cable service, and Internet access. Providers, as
9 defined by KRS 141.121(1)(e), shall apportion income to this state using a three (3) factor formula
10 as provided in KRS 141.901 pursuant to KRS 141.121(3).

11 Section 6. Special Rules: Receipts Factor. The following special rules are established in respect
12 to the receipts factor of the apportionment formula:

13 (1) Bargeline. Bargelines shall determine receipts in this state by multiplying total
14 transportation revenues by a fraction, the numerator of which is miles operated in this state and
15 the denominator of which is total miles operated for the taxable year. Miles operated in this state
16 shall be fifty percent (50%) of the miles operated on the Ohio River, the Big Sandy River, and the
17 Mississippi River adjacent to this state's shoreline plus all miles operated on other inland
18 waterways within this state. A "mile operated" shall mean the movement of a barge, tug, or other
19 watercraft one (1) mile.

20 (2) Busline. Buslines shall determine receipts in this state by multiplying total transportation
21 revenues by a fraction, the numerator of which is miles operated in this state and the denominator
22 of which is total miles operated for the taxable year.

23 (3) Passenger airline. Pursuant to KRS 141.121(2)(b)(1), passenger airlines, as defined by KRS

1 141.121(1)(d), shall determine receipts in this state by multiplying total transportation revenues by
2 a fraction, the numerator of which is Kentucky revenue passenger miles in this state and the
3 denominator of which is total revenue passenger miles for the taxable year. The term “Kentucky
4 revenue passenger mile” is defined by KRS 141.121(1)(c), and the term “revenue passenger mile”
5 is defined by KRS 141.121(1)(g).

6 (4) Pipeline. Pipeline companies shall determine receipts in this state by multiplying total
7 operating revenues by a fraction, the numerator of which is barrel miles transported in this state
8 and the denominator of which is total barrel miles transported for the taxable year. The term “barrel
9 mile” shall mean the transportation of one barrel of liquid or gas one (1) mile.

10 (5) Public service company. Public service companies, as defined by KRS 141.0401(6)(i), shall
11 allocate and apportion net income in accordance with KRS 141.121(5).

12 (6) Qualified air freight forwarder. Pursuant to KRS 141.121(2)(b)(2), qualified air freight
13 forwarders, as defined by KRS 141.121(1)(f), shall determine receipts in this state by multiplying
14 total freight forwarding revenues by a fraction, the numerator of which is miles operated in this
15 state and the denominator of which is total miles operated by the affiliated airline for the taxable
16 year. The term “affiliated airline” is defined by KRS 141.121(1)(a).

17 (7) Railroad. Railroads shall determine receipts in this state by multiplying total transportation
18 revenues by a fraction, the numerator of which is revenue car miles in this state and the
19 denominator of which is total revenue car miles for the taxable year. The term “revenue car mile”
20 shall mean the movement of a loaded railcar one (1) mile.

21 (8) Regulated investment company. Regulated investment companies shall apportion income
22 pursuant to KRS 141.120 and this administrative regulation; provided, however, that a regulated
23 investment company may elect an alternative method for determining receipts pursuant to KRS

1 141.121(4)(b).

2 (9) Securities brokerage services. Securities brokers operating within certain Kentucky
3 Enterprises Zones defined by KRS 141.121(4)(c), shall apportion income pursuant to KRS 141.120
4 and this administrative regulation provided, however, that a securities broker so defined may elect
5 an alternative method for determining receipts pursuant to KRS 141.121(4)(c).

6 (10) Truckline. Trucklines shall determine receipts in this state by multiplying total
7 transportation revenues by a fraction, the numerator of which is miles operated in this state and
8 the denominator of which is total miles operated for the taxable year.

9 ~~[Definition. (1) "Gross receipts" means the total amount of consideration, including cash,~~
10 ~~credit, property, and services, paid for the sale, lease, rental, or use of property.~~

11 ~~Section 2. The following shall be examples of activities that result in the assignments of gross~~
12 ~~receipts to Kentucky and shall be included in the numerator described in KRS 141.120(8)(c), if~~
13 ~~the receipts are business income:~~

14 ~~(1) The sale, lease, rental, or other use of tangible personal property in this state;~~

15 ~~(2) The sale of real property located in Kentucky;~~

16 ~~(3) The lease, rental or other use of real property located in Kentucky;~~

17 ~~(4) The provision of services performed entirely in Kentucky during the tax period;~~

18 ~~(5) The provision of services performed within and without Kentucky during the tax period;~~

19 ~~(6) Intangible property received by a business with a commercial domicile in Kentucky;~~

20 ~~(7) Intangible property, if the intangible has acquired a Kentucky business situs;~~

21 ~~(8) Franchise fees received from a franchisee located in Kentucky; and~~

22 ~~(9) The distributive share of net income received from a general partnership that is required to~~
23 ~~file a Kentucky income tax return under the provisions of KRS 141.206.~~

1 ~~Section 3. Assignment of Sales to Kentucky. (1) Sales of real or tangible personal property~~
2 ~~shall be assigned to Kentucky if the property is in Kentucky or is shipped or delivered to a~~
3 ~~purchaser in Kentucky.~~

4 ~~(2) Sales of goods destined for delivery outside of Kentucky shall not be assigned to Kentucky,~~
5 ~~irrespective of method of shipment or delivery.~~

6 ~~(3) Sales of tangible personal property to the U.S. Government shall be assigned to Kentucky~~
7 ~~if the property is shipped from Kentucky.~~

8 ~~(4) Receipts from intangibles shall be assigned to Kentucky if the corporation's commercial~~
9 ~~domicile is in Kentucky or the intangible has acquired a Kentucky business situs. Examples of~~
10 ~~receipts from intangibles which are deemed to have acquired a Kentucky business situs shall be~~
11 ~~franchise fees from a franchisee located in Kentucky and a corporation's Kentucky distributive~~
12 ~~share of net income from a general partnership doing business in Kentucky.~~

13 ~~(5) Rents or royalties from real or tangible personal property shall be assigned to Kentucky if~~
14 ~~the property is located in Kentucky or in the case of mobile property the rent is assigned to~~
15 ~~Kentucky, if the lessee's base of operations for the property is in Kentucky.~~

16 ~~(6) Receipts from the performance of services shall be assigned to Kentucky if the services are~~
17 ~~performed entirely in Kentucky, or the services are performed both within and without Kentucky~~
18 ~~but a greater portion is performed in Kentucky than in any other state based on cost of performance.~~

19 ~~(7) If the corporation has income from a general partnership, the distributive share income shall~~
20 ~~be included in the sales factor. The denominator shall include the total distributive share; the~~
21 ~~numerator shall include the amount of the distributive share apportioned to Kentucky pursuant to~~
22 ~~KRS 141.206(9).~~

23 ~~Section 4.(1) Receipts from intangible property shall be assigned to Kentucky, regardless of~~

1 the corporation's or general partnership's commercial domicile, if possession and control of the
2 intangible personal property is localized in connection with a trade or business, creating business
3 situs with Kentucky, so that substantial use or value attaches to the intangible property in
4 Kentucky.

5 (2) In determining if possession and control is localized in connection with a trade or business,
6 the following factors shall be considered:

7 (a) The use of the intangible property in the continuous course of the trade or business in
8 Kentucky;

9 (b) The permanency of the location of the intangible property in Kentucky;

10 (c) The independent control and management of the intangible property in Kentucky;


11 (d) The possession and control of the intangible property in Kentucky by an independent local
12 agent for the purpose of transacting a permanent business; and

13 (e) The establishment or use of the intangible property in Kentucky in a manner that attaches
14 substantial use and value of the intangible property to the Kentucky trade or business.

15 Section 5. This administrative regulation shall apply to tax periods beginning on or after
16 January 1, 2005.]

103 KAR 16:270

APPROVED:



DANIEL BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet



DATE APPROVED BY AGENCY

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on December 21, 2018, at 10:00 a.m. in Room 8A, State Office Building, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Todd Renner, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 782-6081 (telephone), (502) 564-3875(fax), Todd.Renner@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 103 KAR 16:270

Contact Person: Todd Renner

Phone Number: (502) 782-6081

Email: Todd.Renner@ky.gov(email)

(1) Provide a brief summary of:

(a) What this administrative regulation does: HB 487 implementing a significant change in the way corporations that delivered services to Kentucky are taxed. The Commonwealth moved from a “cost of performance” to a “market-based” standard for determining what services should be apportioned to the Commonwealth. LRC utilized a Multi-State Tax Commission (MTC) model regulation when drafting HB 487, and this administrative regulation uses the MTC model regulations as its foundation. This administrative regulation provides guidance to taxpayers to determine what services are considered sourced in Kentucky under the “market-based” sourcing rules for use in the single receipts factor apportionment calculations.

(b) The necessity of this administrative regulation: There are myriad different ways to determine how property and services are delivered to the market in Kentucky. This administrative regulation sets forth uniform methods for determining when property and services are sold, marketed, and delivered to customers in Kentucky. It also provides guidance for non-traditional industries for determining receipts in Kentucky based on market-related concepts (e.g., bargelines, railroads, etc.).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides guidance for the significant changes HB 487 made to KRS 141.120(11) related to the marketing of services and other intangible property. The changes to statute require companies to apportion those receipts to Kentucky based on whether they are marketed in the Commonwealth. This administrative regulation expands guidance for determining what is “marketed.”

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the guidelines necessary to comply with the requirements of the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any multi-state corporation with apportionable income in Kentucky will be affected by this administrative regulation. There are approximately 200,000 corporate returns filed annually in the state.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Taxpayers are required to evaluate the nature of their receipts in the Commonwealth and may be required to change the apportionment of those receipts if they are marketed in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs are not readily available. However, multi-state taxpayers currently comply with market-based receipts sourcing in many other states, so they are familiar with the concept and have systems in place to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers that perform services in Kentucky and generate receipts for those services outside Kentucky will benefit from the elimination of the “cost of performance” standard and the adoption of the “market-based” standard for sourcing those receipts.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no new costs are associated with this administrative regulation. Current department staff and resources will be used to implement this administrative regulation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Currently budgeted department funding and staff will be utilized to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied to this administrative regulation. All taxpayers who fall under the provisions of this administrative regulation will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 16:270

Contact Person: Todd Renner

Phone Number: (502) 782-6081

Email: Todd.Renner@ky.gov(email)

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 141.018, and 141.120.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for state and local government agencies as a result of the changes to this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: Not Applicable

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 103 KAR 16:270

Contact Person: Todd Renner

Phone Number: (502) 782-6081

Email: [Todd.Renner@ky.gov\(email\)](mailto:Todd.Renner@ky.gov)

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(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: Not Applicable